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No.

In the Supreme Court of the United States

ROLAND GIBSON, SR., JESSE GIBSON, ROLAND GIBSON, JR. and DENNIS GIBSON
PETITIONERS

vs.

THE CITY OF NEW ORLEANS and LLOYD WEST
RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE LOUISIANA STATE SUPREME COURT

PETITION FOR WRIT CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Does a warrantless arrest by police of a citizen, while in his home after a fruitless search, pursuant to uncorroborated information provided by an arrestee, who was a convicted felon, known by police to be unreliable, violate the provisions of the Fourth Amendment where the search warrant affidavit was deceptive, in that it contained deliberate lies by the informant, along with intentional misstatements and omissions including omissions regarding the informant's veracity, credibility and basis of knowledge.

2. When a citizen has both state and federal remedies for violations of his Fourth and Fourteenth Amendment rights, can that state's highest court, on review, create post-trial, an arbitrary, evidentiary rule, solely applicable to that case, that by its effect, retroactively revokes the state remedy, thereby effectively denying that citizen his federal remedy and the equal protection to which he is entitled under the Fourteenth Amendment.

3. Is a citizen's Fourth Amendment right to be free from unlawful arrest violated when he is arrested in his home without a warrant by police officers whose conduct when judged by an objective standard would be considered, at a minimum, grossly negligent and most probable as evidencing a reckless indifference to the individual's right?

4. Is a citizen deprived of liberty within the meaning of the Due Process Clause of the Fourteenth Amendment when he is convicted and serves twenty-five years of a life sentence as a result of the police officers' misconduct in con-

nection with the arrest and the prosecution's failure to disclose exculpatory material in the state's file?

5. Can a state's highest court, on review, post-trial, effectively eviscerate a person's state tort-law remedy so as to deny that individual adequate redress for injury to which he is entitled under the Fourteenth Amendment?

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All parties have been served pursuant to Supreme Court Rule 29.3.

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PETITION FOR WRIT OF CERTIORARI

Petitioners, Roland Gibson, Sr., Jesse Gibson, Roland Gibson, Jr. and Dennis Gibson respectfully petition this Court for a writ of certiorari to review the judgment of the Louisiana State Supreme Court which disposed of petitioners' Fourth and Fourteenth Amendment claims on the merits. A ruling on the merits of federal questions by the highest state court leaves the federal questions open to review by this Court.[1]

V.

OPINION BELOW

The Louisiana State Supreme Court decided this case on April 11, 2000. An Application for Rehearing was filed on April 13, 2000. The Application for Rehearing was denied on June 16, 2000. The opinion of the Louisiana State Supreme Court of April 11, 2000 and the per curiam opinion dated June 16, 2000 are reported at 758 So. 2d 782 (LA 2000). The opinions of the Louisiana State Supreme Court and the Louisiana Fourth Circuit Court of Appeals are reprinted as Appendix A and Appendix B, respectively.

VI.

STATEMENT OF JURISDICTION

The Gibsons seek review of the judgment of the Louisiana State Supreme Court issued on April 11, 2000

[1] *Manhattan Life Insurance Company v. Cohen*, 234 U.S. 123, 134 (1914); *Raley v. Ohio*, 360 U.S. 423, 436 - 437 (1959); *Boykin v. Alabama*, 395 U.S. 238, 241 - 242 (1969).

and their denial of rehearing on June 16, 2000.[2]

This Court has jurisdiction under 28 U.S.C.A. section 1257 (a). This petition was filed within ninety days of the date of the denial of petitioners' Application for Rehearing and thus, timely.[3]

VII.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THIS CASE

The following constitutional provisions and statutes are involved in this case:

United States Constitution, Fourth and Fourteenth Amendments

The Fourth Amendment to the United States Constitution provides in pertinent part:

The right of the people to be secure in their person, houses, papers and effects, against unreasonable searches and seizures, shall not be violated ...

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

[n]or shall any state deprive any person of life, liberty or property without due process of law, nor deny any person within its Jurisdiction the equal protection of the laws.

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[2] See Appendix A.

[3] Supreme Court Rule 13. 1.

VIII.

STATEMENT OF THE CASE

At approximately 8:30 o'clock p.m. on December 30, 1967, Charles Reinecke, Jr., a taxi driver, was killed with a .22 caliber weapon during an armed robbery. A fingerprint which was lifted from one of the back windows of the cab was later traced to Lloyd West. West's fingerprints were on file because he had prior criminal convictions for burglary, assault and battery. Also, during a previous arrest West had been charged with illegal possession of a .22 caliber weapon.

West was arrested on January 29, 1968 and charged with a crime that was unrelated to the Reinecke murder. He was brought in for questioning about the Reinecke murder on March 27, 1968, approximately three months after the murder. He first denied any knowledge of the murder and gave the police two individuals with whom he claimed to have been at the time of the murder. Those individuals were questioned by the police and denied being with West. West next gave the police a third individual as an alibi witness, Thomas Crayton, who also denied being with West at the time of the murder. According to the police, Crayton informed them that on December 29, 1967 West and an AWOL soldier named "Roland" had spent the night at his home. Crayton stated that he left West and "Roland" at his home before noon, on December 30, 1967, approximately nine hours before the crime. The police contacted the Army and confirmed that as of 7:00 o'clock a.m. on December 30, 1967, a soldier named Roland Gibson, Sr. was AWOL from

his company at Fort Campbell, Kentucky and could have been missing for forty-eight (48) hours .[4]

West was interviewed a third time and confronted by the police with the discrepancies in his two earlier statements. At this point, he again changed his story and claimed that he was with his mother at the time of the murder. The police reported that when Mrs. West was summoned to the police station, she denied being with her son at the time of the murder and told them that he was lying. The police then asked West to submit to a polygraph test which he failed. On March 29, 1968, after failing the polygraph, according to the police, West admitted he was at the scene of the Reinecke murder and named Roland Gibson, Sr. as the shooter.

Based on West's alleged confession, the police obtained a search warrant for Gibson's residence. The search was conducted, however, the alleged murder weapon was not discovered.[5] Although the search of Gibson's home produced no incriminating evidence, he was arrested in his home without an arrest warrant more than two hours after the fruitless search.

Ironically, on March 30, 1968 the police obtained a search warrant for West's residence because, following the fruitless search of Gibson's home, West confessed that the murder weapon, as stated in the probable cause affidavit to obtain the search warrant for Gibson's home was, all along, at his residence under his mattress.

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[4] See Appendix F.

[5] See Appendix G.

On April 4, 1968 West and Gibson were jointly indicted by a Grand Jury for first degree murder. On November 21, 1968 Gibson was found guilty as charged with a recommended life sentence and on November 25, 1968 the Court sentenced Gibson to serve the balance of his natural life at hard labor in the Louisiana State Penitentiary at Angola. On November 27, 1968 West withdrew his plea of not guilty and entered a plea of guilty to the charge of first degree murder without capital punishment. The State of Louisiana accepted West's guilty plea and he was sentenced to serve the balance of his natural life at hard labor in the Louisiana State Penitentiary at Angola.

Gibson was granted a new trial on December 18, 1993. On March 31, 1993, the State of Louisiana entered a Nolle Prosequi in the matter *State of Louisiana v. Roland Gibson*.[6]

IX.

PROCEEDINGS BELOW

The instant lawsuit was filed in the Civil District Court for the Parish of Orleans on March 30, 1993 against the City of New Orleans, Lloyd West and the Orleans Parish District Attorney's Office seeking damages for malicious prosecution, false imprisonment and intentional, reckless and inexcusable indifference to the constitutional rights of

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[6] 271 So. 2d 868 (LA 1973).

petitioner, Roland Gibson, Sr.. The Orleans Parish District Attorney's Office was voluntarily dismissed from this matter after the Louisiana State Supreme Court held in another case that the office enjoyed absolute immunity.[7]

A bifurcated trial was held on January 29 and 30, 1998 and on February 2, 1998. On February 2, 1998 the jury returned a unanimous verdict in favor of the Gibson family and against Lloyd West which found West twenty-five percent at fault and the City of New Orleans seventy-five percent at fault for causing Mr. Gibson's false arrest, malicious prosecution and time served in prison. On February 9, 1998 the trial court rendered its verdict in favor of the Gibson family and against the City of New Orleans finding the City ninety percent at fault for the deliberate actions of the police in causing Mr. Gibson's false arrest, malicious prosecution and time served in jail.[8] The trial court found West only ten percent at fault.

On February 28, 1998 the Louisiana Fourth Circuit Court of Appeals amended the trial court's judgment by reducing the ninety percent assessment of fault against the City of New Orleans to forty-five percent. The Court then assigned the forty-five percent reduction to the non-party, immune, defendant, the Orleans Parish District Attorney's office. Mr. West's assessment of fault remained at ten percent.[9]

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[7] *Knapper v. Connick*, 681 So. 2d 944 (LA 1996).

[8] See Appendix C.

[9] See Appendix B.

On March 4, 1999 the City of New Orleans filed an Application for Rehearing with the Louisiana Fourth Circuit Court of Appeals. On May 14, 1999 the Louisiana Fourth Circuit Court of Appeals denied the City's Application for Rehearing. Mr. West did not file an Application for Rehearing, nor did he file an Application for Supervisory Review with the Louisiana State Supreme Court. On June 14, 1999 the City of New Orleans, filed an Application for Supervisory Review with the Louisiana State Supreme Court. The Louisiana State Supreme Court granted the City's Writ Application and on April 11, 2000 reversed the trial court's judgment in its entirety.

On April 13, 2000 the Gibsons filed an Application for Rehearing asserting, inter alia, that the Louisiana State Supreme Court had taken various decisions of the federal appellate courts and this Court's decisions out of their proper context and decided significant federal questions regarding the Fourth and Fourteenth Amendments to the United States Constitution in ways that directly conflicted with those federal decisions. Further, the Gibson's asserted that the Court was not following its own evidentiary rules in not permitting the trier of fact to determine, based on her own observation, whether to believe testimony offered before her in the 1998 civil trial rather than a confession implicating petitioner which was so suspect that a criminal court judge in 1993 granted petitioner a new trial which resulted in the later dismissal of the charges. On June 16, 2000 the Louisiana State Supreme Court denied rehearing in a per curiam opinion, holding that the trial judge was manifestly erroneous in crediting West's 1993 recantation of his 1968

criminal trial testimony.[10] The trial judges's statement in her Reasons for Judgment that based on personal observations in the 1998 civil trial she found his recantation of his earlier testimony and his allegations of beatings "very credible". At no point in her Reasons for Judgment, did she indicate that she credited West's 1993 sworn recantation at the post conviction relief hearing of his 1968 trial testimony.[11] The Louisiana State Supreme Court ignored West's 1998, uncontroverted civil trial testimony which the trial court held was "very credible".[12]

X.

REASONS FOR ALLOWANCE OF THE WRIT

A. THE QUESTIONS PRESENTED ARE OF EXTRAORDINARY NATIONAL IMPORTANCE THAT NEED TO BE ADDRESSED IF CONSTITUTIONAL GOVERNMENT IS TO SURVIVE

Courts have a constitutional obligation to identify constitutional violations and also to remedy them. The Louisiana State Supreme Court was derelict in its duty to recognize violations of its citizens' Fourth and Fourteenth Amendment rights and to provide a meaningful remedy for the unconstitutional punishment suffered by Mr. Gibson and his family as a result of police misconduct that violated Gibson's Fourth and Fourteenth Amendment rights under the

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[10] See Appendix A.

[11] See Appendix C.

[12] See Appendix A.

Constitution of the United States of America.

Certiorari is appropriate in this case to determine:

Does a warrantless arrest by police of a citizen, while in his home after a fruitless search, pursuant to uncorroborated information provided by an arrestee, who was a convicted felon, known by police to be unreliable, violate the provisions of the

Fourth Amendment where the search warrant affidavit was deceptive, in that it contained deliberate lies by the informant, along with intentional misstatements and omissions including omissions regarding the informant's veracity, credibility and basis of knowledge.

When a citizen has both state and federal remedies for violations of his Fourth and Fourteenth Amendment rights, can that state's highest court, on review, create post-trial, an arbitrary, evidentiary rule solely applicable to that case that by its effect, retroactively revokes the state remedy, thereby effectively denying that citizen his federal remedy and the equal protection to which he is entitled under the Fourteenth Amendment.

Is a citizen's Fourth Amendment right to be free from unlawful arrest violated when he is arrested in his home without a warrant by police officers whose conduct when judged by an objective standard would be considered, at a minimum, grossly negligent and most probable as evidencing a reckless indifference to the individual's right?

Is a citizen deprived of liberty within the meaning of the Due Process Clause of the Fourteenth Amendment when he is convicted and serves twenty-five years of a life sentence as a result of the police officers' misconduct in connection with the arrest and the prosecution's failure to disclose exculpatory material in the state's file?

Can a state's highest court, on review, post-trial, effectively eviscerate a person's state tort-law remedy so as to deny that individual adequate redress for injury to which he is entitled under the Fourteenth Amendment?

The Louisiana State Supreme Court's decision decided Fourth Amendment questions that conflict with *Beck v. Ohio; Illinois v. Gates, Franks v. Delaware and Willis v. Jordan*[13], which hold that uncorroborated, untrustworthy information supplied by a convicted felon, who had already been arrested for the crime, cannot provide sufficient probable cause to justify an arrest or a search warrant.

B. SUMMARY OF ARGUMENT

The Louisiana State Supreme Court erroneously held that the arrest of Roland Gibson in his home without an arrest warrant does not violate the provisions of the Fourth Amendment where he was arrested more than two hours after a fruitless search pursuant to a warrant which lacked

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[13] *Beck v. Ohio*, 379 U.S. 89, 91 - 93 (1964); *Illinois v. Gates*, 462 U.S. 213 (1983); *Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 667 (1978), *Willis v. Jordan*, 20 R.I. 630, 41 ATL 253 (1898).

probable cause because the search warrant affidavit was deceptive and misleading and contained false statements by the informant, and material misstatements and omissions. The search warrant affidavit does not reveal that West had been convicted of burglary, assault and battery or that he had been previously arrested for illegal possession of a .22 caliber pistol which was the same type of weapon used in the Reinecke murder. The search warrant affidavit contains misstatements and is deceptive in that it states that West's alibis did not check out and that he took a polygraph test, however, it did not reveal that West had first denied any knowledge of the crime on at least four occasions and that he had failed the poly-graph test.[14] The affidavit does not state that West's left middle fingerprint had been lifted from the back window of the victim's cab or that he confessed and named Gibson as the shooter only after being confronted with the information regarding his fingerprint. The affidavit falsely stated that Gibson was in possession of the murder weapon and that he had shot into a lady's apartment and at military police with this weapon.[15] The affidavit truthfully stated that Gibson was AWOL from the Army. Even though Gibson was AWOL the police could not arrest him for that infraction.[16]

The Louisiana State Supreme Court, on rehearing concluded that West's faulty confession was corroborated by Thomas Crayton who had stated that he had seen West and

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[14] *Barefoot v. Estelle*, 463 U.S. 880, 103 S. Ct. 3383, 77 L. Ed. 1090 (1983); *Bennett v. City of Grand Prairie, Texas*, 883 F. 2d 400 (5th Cir. 1989).

[15] See Appendix E and

[16] *Kurtz v. Moffitt*, 115 U.S. 487, 6 S. Ct. 148, 29 L. Ed. 458 (1895).

Gibson together nine hours before the murder, however, Thomas Crayton's statement was not contained in the search warrant affidavit. Furthermore, the statement was provided to the police on March 27, 1968 and Gibson's arrest took place three days later, or on March 30, 1968. The police had three days to secure an arrest warrant. Moreover, the fact that, when questioned by the police three months after the crime, Thomas Crayton mistakenly stated that he saw West and Gibson together nine hours before the murder, is not sufficient information or exigent circumstances to establish probable cause for Gibson's arrest three days later without a warrant.

There is no information in the search warrant affidavit regarding West's veracity, basis of knowledge, or reliability. The affidavit is devoid of Mr. West's general background, employment, personal attributes, position in the community, reputation with others or the police, the probable absence of any motivation for falsity, the presence of West's criminal record, his association with known criminals, the accuracy of the information provided by him in the past, his educational background and that he was also charged as a principal in the Reinecke murder.

The uncorroborated information by West, a convicted felon, who on four previous occasions had denied any knowledge of the Reinecke murder, and failed a polygraph test cannot, under these circumstances, provide sufficient probable cause or a residence search warrant or the warrantless arrest of Mr. Gibson, while he was in his home, whether applying the present totality of the circumstances

analysis under *Gates*[17], or the earlier two prong test in *Aguilar v. Texas*[18] and *Spinelli v. United States*[19].

C. THE LOUISIANA STATE SUPREME COURT REJECTED OUTRIGHT THIS COURT'S BASIS TEST FOR DETERMINING THE SCOPE OF THE FOURTH AMENDMENT.

The common law, from the time our forefathers adopted the Fourth Amendment, has always provided significant, if not decisive, guidance as to what the framers of the Fourth Amendment thought was reasonable probable cause for the issuance of a search warrant, particularly involving the sanctity of the home. No right is held more sacred or is more carefully guarded by the common law than the right to be free of unreasonable searches and seizures.[20]

What has evolved over time is a clear set of rules that were abdicated in this case. The Louisiana State Supreme Court held that the trial court committed manifest error by finding that the police should not have believed West's statements when he implicated Gibson in the murder. The Louisiana State Supreme Court, citing *United States v. Harris*[21] reasoned that West's statements were believable

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17 *Illinois v. Gates*, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983).

18 378 U.S. 108 (1964).

19 393 U.S. 410 (1969).

20 *Terry v. Ohio*, 88 S. Ct. 1868, 392 U.S. 120 (1968); *Payton v. New York*, 445 U.S. 573, 591 (1983).

21 403 U.S. 573, 91 S. Ct. 2075, 29 L. Ed. 2d 723 (1971).

because he implicated himself in the Reinecke murder. To the contrary, West told the police only what they already knew. After denying any knowledge of the crime on four occasions by giving false alibis; after failing a polygraph examination; after being told by the police that Crayton stated that nine hours before the crime he was with an AWOL soldier named "Roland"; and after being confronted by police with the fact that his left, middle fingerprint had been lifted from the rear window of the victim's cab, West admitted being at the scene of the crime but named Roland Gibson as the shooter. At the time West implicated Mr. Gibson in the Reinecke murder he was charged as the prime suspect.

> This Court, in *Franks v. Delaware*,[22] in summary stated:
>
> "[W]e hold that, where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request. In the event that at that hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit. Id. 98 S. Ct. at 2676-77."

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[22] 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 667 (1978).

While Franks dealt only with misstatements, Judge Coleman in *United States v. Park*[23], recognized that allegations of material omissions were to be treated essentially similarly, to claims of material misstatements. According to *United States v. House*[24]; *United States v. Collins*[25]; *United States v. Lewis*[26]. The affidavit is misleading in that it failed to state that West had actually denied any knowledge of the crime on four occasions. The affidavit further stated that West had taken a polygraph test. The information regarding the polygraph test misled the judge who signed the warrant into believing that West had passed the polygraph test, when in fact he had failed the test. The polygraph test results can be included in a probable cause affidavit[27] but West's test results were not included in the probable cause affidavit to search Gibson's home.

The affidavit is devoid of any indicia of West's credibility or reliability. When we view the affidavit as a whole it is obvious that it does not provide a substantial basis to support probable cause to search Gibson's home. It certainly does not provide probable cause to arrest him after the search failed to turn up the weapon or any other incriminating evidence.

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23 531 F.2d 754, 758 - 759 (5h Cir. 1976).

24 604 F.2d 1135, 1141, N. 9 (8h Cir. 1979).

25 549 F.2d 557, 561 (8th Cir. 1977), *cert. denied*, 431 U.S. 940, 97 S.Ct. 2656, 53 L.Ed.2d 259 (1977).

26 425 F.Supp. 1166,1173 (D. Conn. 1977).

27 *Barefoot v. Estelle*, 463 U.S. 880, 103 S. Ct. 3383, 77 L. Ed. 1090 (1983); *Bennett v. City of Grand Prairie, Texas*, 883 F. 2d 400 (5th Cir. 1989).

In *Illinois v. Gates*,[28] this Court adopted the "totality of the circumstances" test for determining whether a warrant is supported by probable cause. Under *Gates* (supra):

> "The task of the issuing magistrate is simply to make a practical common sense decision whether, given all the circumstances set forth in the affidavit before him, including the veracity and basis of knowledge of persons supplying hearsay information there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the duty of a reviewing court is simply to ensure that the magistrate had a substantial basis for ... concluding that probable cause existed.
>
> Id. 103 S. Ct. at 2332 [quoting *Jones v. United States*, 362 U.S. 257, 271, 80 S. Ct. 725, 736, 4 L. Ed. 2d 697, (1960)]. In reviewing a warrant therefore, we consider the informant's veracity, reliability and basis of knowledge as important factors, however, a deficiency in one may be compensated for in determining the overall reliability of a tip by a strong showing as to the other or by some other indicia of reliability.
>
> The first consideration by the Court is that the affidavit must demonstrate the veracity and reliability of the informant. Reliability may be established by showing that the informant is a bystander or eye-witness; the second consideration is whether the informant incriminates himself; the third consideration is whether the affidavit demonstrates a sufficient basis of knowledge on the part of the informant."

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[28] 462 U.S. 213, 103 S. Ct. 2317, 2328, 76 L. Ed. 2d 527 (1983).

Citing *United States v. Harris*, the Louisiana State Supreme Court held that West's confession where he implicated himself in the crime and stated that Gibson was the shooter in the robbery and murder was credible because this was his first confession and because he made an admission against his penal interests. Admissions against penal interests are of little value where the informer is speaking under immunity or a deal.[29] This is true under *Illinois v. Gates*[30], however, a flexible totality of the circumstances approach is required. Where an affidavit personally incriminates the affiant or informer by telling the police what they already knew, such an act is viewed as an attempt to curry favor and receive more lenient treatment from the police officers.[31]

In this case, West testified under oath that at the police's insistence he implicated Gibson in the Reinecke murder to avoid capital punishment and to stop the beatings. Other than to stop the beatings and avoid capital punish-

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29 *United States v. Harris*, 403 U.S. 573, 29 L. Ed. 2d 723, 91 S. Ct. 2075 (1971).

30 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983).

31 *United States v. Jackson*, 818 F. 2d 345 (5th Cir. 1987); *Illinois v. Gates*, 462 U.S. 213, 103 S. Ct. 23 17, 2328, 76 L. Ed. 2d 527 (1983); Jones v. United States, 362 U.S. 257, 271, 80 S. Ct. 725, 736, 4 L. Ed. 697 (1960).

32 *Beck v. Ohio*, 379 U.S. 89, 91, 85 S. Ct. 223 - 225, 226, 13 L. Ed. 2d 142 (1964), because sufficient probability, not certainty is the touchstone of reasonableness under the Fourth Amendment. *Hill v. California*, 401 U. S. 797, 804, 91 S. Ct. 1106, 1111, 28 L. Ed. 2d 484 (1971), probable cause itself is a doctrine of reasonable probability not certainty. *United States v. Magluta*, 44 F. 3d 1530 (11th Cir. 1995); *Ortega v. Christian*, 85 F. 3d 1521, 1524 (11th Cir. 1996).

ment, he had no other reason for saying that Gibson had committed the murder.

D. PROBABLE CAUSE TO ARREST

Probable cause to arrest exists when the facts and circumstances within the collective knowledge of law enforcement officers or of which they have reasonably trustworthy information, would cause a prudent person to believe that the suspect has committed or is committing an offense." It must be judged not with clinical detachment, but with a common sense view of the realities of normal life.[33]

In this particular case Gibson was arrested at his home more than two hours after a search pursuant to a warrant failed to turn up the weapon or any other incriminating evidence. The .22 caliber weapon the police were looking for was in the possession of West when he gave the police the false information to establish probable cause for the Gibson search-warrant application. The police had ample time, more than two hours, in which to secure an arrest warrant. In *Payton v. New York*,[34] this Court held that absent special circumstances, a warrantless arrest in the home is unconstitutional.

Contrary to *Payton v. New York*[35] this Court also held in *Illinois v. Gates*[36] that probable cause must be deter-

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33 *Kurtz v. Moffitt*, 115 U.S. 487, 6 S. Ct. 148, 29 L. Ed. 458 (1885).

34 445 U.S. 573, 591, 100 S. Ct. 1371, 63 L. Ed. 2d 639

35 (1980). 445 U.S. 573, 591, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980).

36 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983).

mined by the totality of the circumstances. However, an informant's reliability, veracity and basis of knowledge are still, "all highly relevant".[37] Under Gates, a confidential informant may provide adequate information to establish probable cause for a warrantless arrest, so long as the basis for the informant's knowledge and the information's reliability, when examined under the totality of the circumstances, are established. Hearsay statements of anonymous informants may provide probable cause even without corroboration, if there is sufficient circumstances and details to provide a substantial factual basis for concluding that the informant is credible and that the information is reliable and was obtained under circumstances or from sources indicating its veracity, particularly where there is an incentive to lie.[38]

In the present case the record does not establish or even suggest that West's confession was credible and there was no corroboration. The evidence indicates that the police knew the information provided by West was unreliable.

The Louisiana State Supreme Court's conclusion that Thomas Crayton's statement to the police on March 27, 1968 that he had seen West and Gibson together on December 30, 1967 nine hours before the murder, was not contained in the search warrant affidavit. A statement that Gibson was with West nine hours before the murder, even if true, was not sufficient information to obtain an arrest warrant, nor arrest Mr.

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[37] *Illinois v. Gates*, 462 U.S. 213, 103 S. Ct. 2317. 76 L. Ed. 2d 527 (1983).

[38] *Morin v. Caire*, 77 F. 2d 116 (5' Cir. 1996).

Gibson without a warrant. Moreover, Gibson's arrest took place three days later, or on March 30, 1968. Since no exigent circumstances can be shown, the police were required to secure an arrest warrant. The search failed to turn up any incriminating evidence and absent exigent circumstances, the arrest was illegal under *Payton* because the "government cannot at the same time justify an arrest by a search or, justify a search by an arrest.[39]

E. THE LOUISIANA STATE SUPREME COURT DENIED PETITIONER'S FEDERAL AND STATE REMEDIES FOR VIOLATIONS OF HIS FOURTH AND FOURTEENTH AMENDMENT CONSTITUTIONAL RIGHTS WITH AN ARBITRARY EVIDENTIARY RULING

Roland Gibson was wrongfully convicted of murder, based on the sole testimony of Lloyd West, as a result of an alleged confession made by West implicating Gibson, which was secured by beatings. West's fingerprint was found at the crime scene. Other than West's alleged confession no other evidence connected Gibson to the crime scene or the crime. Gibson had his mother, mother-in-law, and his wife as alibi witnesses. Furthermore, Mr. Gibson testified in his own defense.

After serving twenty-five years of a life sentence, Gibson secured his release when it was determined that the prosecution did not turn over information to Gibson's attorney indicating that West had lied repeatedly to police prior to

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39 *Johnson v. United States*, 3 3 3 U. S. 10 (1948).

and after giving the alleged confession which implicated Gibson.[40]

After his release, Gibson had the option to seek relief under the federal remedy, **42 U.S.C.A. section 1983**, or a state remedy, **Louisiana Civil Code Article 2315**, for false imprisonment, malicious prosecution, and reckless disregard for his constitutional rights. Given that West was now willing to be truthful, and trusting in the ability of a trial judge to be able to determine the credibility of West or any police witnesses who would be called to dispute his testimony, Gibson chose to pursue his remedy in state court.

West testified at the civil trial that the police beat him in order to obtain a confession, told him they knew he was with "Roland" and forced him to implicate Gibson as his accomplice. West testified that, at that point, he would have given anyone's name to stop the beatings.

The Louisiana State Supreme Court in its per curiam opinion[41] attempted to corroborate, or buttress statements by West in his confession which at the civil trial he testified were lies. Mentioning Thomas Crayton's statement does not cure the lies that West had told at the time of his arrest, nor does it cure the false and misleading search warrant affidavit.

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40 *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

41 See Appendix A at page 794.

The City of New Orleans did not call any witnesses except West to testify at the trial nor was any evidence offered to refute West's testimony. The trial judge found West's testimony to be very credible and gave reasons based on observations that were made during his testimony, and during the course of the trial. In this particular case the trial judge observed Mr. West's demeanor during the three day trial. She questioned Mr. West extensively regarding his 1968 statement and the beatings and rendered a judgment regarding West's civil trial testimony. The trial Judge stated in her Reasons for Judgment that she "found Mr. West to be a very credible witness. He described the beatings and torture in great detail and it was apparent that while testifying he was actually reliving this experience".[42] The Louisiana State Supreme Court did not accord the trial court the "much discretion" that has always been given the findings by the trier of fact, and it ignored the fact that there was no testimony adduced by the City of New Orleans to dispute West's testimony.

To the contrary, the Louisiana State Supreme Court held that the most reliable evidence given by West was the 1968 confession in the police report and his 1968 criminal trial testimony. At the civil trial West admitted that both his 1968 confession and the 1968 criminal trial testimony were lies, coerced by the police. In effect, the Louisiana State Supreme Court created an evidentiary rule, solely applicable to this case, which did not exist at the time the Gibson's filed their lawsuit or at the time of the trial, i.e. West's testimony could only be believed if it supported his alleged voluntary

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[42] See Appendix C.

confession. Thus, Gibson had no post-deprivation due process remedy in that the testimony offered by West at the trial which the Court concluded to be "very credible" was not accorded any weight by the Louisiana State Supreme Court. The Louisiana State Supreme Court completely ignored West's civil trial testimony that his confession and 1968 criminal trial testimony were lies and arbitrarily concluded that the confession and criminal trial testimony should be believed over the testimony that he provided in the 1993 criminal proceedings.[43]

Finally, petitioners were prevented from exercising their federal remedy for the violations of Gibson's Fourth and Fourteenth Amendment rights because the Louisiana State Supreme Court, ignored the law on the standard of review, by arbitrarily setting aside corroborated, uncontradicted, credible evidence on appeal, thereby failing to provide petitioner equal protection under the law which retroactively revoked petitioners' state court remedy years after the choice of forums had been made.

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43 *Borsky v Board of Regents of N. Y*, 347 U.S. 442, 98 L.Ed. 829, 74 S. Ct. 650 (1954); *Provident Savings and Loan Association Society v. Kentucky*, 239 U.S. 103, 36 S. Ct. 34, 60 L. Ed. 167 (1915); *Grannis v. Ordean*, 234 U.S. 385, 345 S. Ct. 779, 58 L. Ed. 1363 (1914); *New York & Queens Gas Company v. McCall*, 245 U.S. 345, 38 S. Ct. 122, 62 L. Ed. 337 (1917).

XI.

CONCLUSION

The Petition for a Writ of Certiorari should be granted and the Judgment of the Louisiana State Supreme Court should be summarily reversed. Alternatively, the Court should grant plenary review of the Judgement below.

RESPECTFULLY SUBMITTED:

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